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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGELIO REYES,

Defendant and Appellant.

2d Crim. No. B264638
(Super. Ct. No. 2011006266)
(Ventura County)

Rogelio Reyes appeals from a judgment after a jury convicted him of first degree murder (Pen. Code, § 187, subd. (a))¹ and found true the allegation that he personally discharged a firearm (§ 12022.53, subd. (d)). The trial court sentenced Reyes to 50 years to life in state prison.

Reyes contends the trial court erred by failing to give an accomplice testimony jury instruction. We affirm.

¹ All further statutory references are to the Penal Code.

1) The Murder

Reyes invited his “on and off” girlfriend, Tiffany Alfaro, to “hang out” at a motel. She invited her best friend, Felicia Guillen. Reyes and George Huizar picked up the women in Huizar’s Acura, and the group drove to a motel.

At the motel, Huizar played music from his laptop. Guillen texted José Soto, who later met the group at the motel. While at the motel, Alfaro saw a gun tucked into the waistband of Reyes’s pants. The gun was silver with a black grip, and it had the letter “R” on it.

Reyes and Huizar left the motel together, saying they were going to sell marijuana. Huizar took his laptop with him. A few minutes later, Alfaro, Guillen, and Soto left the motel in Soto’s car. On their way home, Reyes called them and said that he and Huizar needed gas and asked for a ride. They drove to Guillen’s ex-boyfriend’s house to pick up a container of gas. After picking up gas, they followed Reyes’s directions to a location in Camarillo.

They met Reyes at an off-road lot. Huizar’s Acura was parked nearby, but Huizar was not present. Reyes told Soto to turn off his headlights, and he told Alfaro to get out of the car and help him carry items from the Acura to Soto’s car. They carried speakers, a subwoofer, glass jars of marijuana, and Huizar’s laptop from the Acura to Soto’s car.

Reyes took the gas container from Soto’s car. He poured gas on the Acura and lit it on fire. He then got into Soto’s car and said “drive, drive, drive.” Reyes said, “I shot him. I shot him . . . he was still breathing, so I shot him again. I went back and shot him again.” He took some bullet casings out of his

pocket and said, “Don’t worry. They can’t do anything without these.”

The group drove away from the scene. During the drive, Reyes called Francisco Billalba to arrange for the sale of some of the items. When they arrived at Alfaro’s sister’s apartment, Alfaro and Reyes moved the items taken from the Acura into the apartment.

Soto dropped off Alfaro, Guillen, and Reyes at Alfaro’s mother’s house. Reyes gave Soto marijuana in a glass jar.

The next morning, Guillen went to the police station to report the crime. That afternoon, Reyes and Alfaro were walking from Reyes’s house when police officers approached them and told them to stop. Reyes attempted to run away, but was caught and arrested.

2) The Investigation

The police found Huizar’s body in an agricultural field in Camarillo. There was a gunshot wound to his head, and a bullet was found in the dirt underneath his head. An autopsy revealed that Huizar was shot three times. Tire tracks and shoe prints were found near Huizar’s body. A forensic scientist concluded that there was limited to moderate support that the shoe prints matched Reyes’s shoes and that the tire tracks matched the Acura tires.

Huizar’s Acura was located in a dirt lot about a mile and a half away from Huizar’s body. It appeared that gasoline had been poured on the outside of the car and ignited. A gas container was found near the Acura.

The police searched Reyes’s home and found gun shell casings in the pockets of a pair of jeans and a glass jar

containing marijuana. They also found a burnt set of Acura car keys in an outdoor barbecue.

CALCRIM No. 334

The trial court instructed the jury on felony murder and premeditated murder. It did not instruct with CALCRIM No. 334 (accomplice testimony must be viewed with caution and requires corroborating evidence). Reyes contends the trial court erred by failing to give CALCRIM No. 334, claiming that Alfaro and Guillen were accomplices. We disagree.

A defendant may not be convicted on the testimony of an accomplice without corroborating evidence connecting the defendant to the commission of the offense. (§ 1111.) If there is substantial evidence that a witness is an accomplice, the trial court must instruct the jury to determine whether the witness is an accomplice and, if so, on the need for corroboration and caution in viewing such evidence. (*People v. Tobias* (2001) 25 Cal.4th 327, 331; CALCRIM No. 334.)

An accomplice is a person who is liable for the identical offense charged against the defendant. (§ 1111.) An accomplice must have guilty knowledge and intent with respect to the crime. (*People v. Lewis* (2001) 26 Cal.4th 334, 369.) The defendant has the burden of proving that a witness is an accomplice. (CALCRIM No. 334; *People v. Cook* (2006) 39 Cal.4th 566, 601.)

Reyes fails to meet his burden. His claim that the robbery was preplanned and the women “lured” Huizar to the motel room is speculative at best. The additional facts that they gave inconsistent statements to the police and participated in removing items from the Acura do not establish by a preponderance of evidence that they were accomplices to the

charged crimes. There is no substantial evidence of Alfaro and Guillen's intent to commit a crime, nor is there substantial evidence that they had knowledge of Reyes's intent to commit murder or robbery.

Even if Alfaro and Guillen were accomplices, any error was harmless. "A trial court's failure to instruct on accomplice liability under section 1111 is harmless if there is 'sufficient corroborating evidence in the record.' [Citation.]" (*People v. Avila* (2006) 38 Cal.4th 491, 562.) Corroborating evidence need only implicate the defendant in the crime. It may even be slight and entitled to little consideration when standing alone. (*Ibid.*)

There was sufficient corroborating evidence in this case. The search of Reyes's home revealed a glass jar of marijuana, several bullet casings, and burnt Acura car keys. Billalba said that Reyes sold him a subwoofer, a speaker, and two guns, including a Rossi that looked similar to the gun Alfaro observed in Reyes's waistband on the night of the murder. (See *People v. Zapien* (1993) 4 Cal.4th 929, 982-983 (*Zapien*) [testimony of other witnesses serves as corroborating evidence].) Huizar's girlfriend confirmed that a subwoofer and speakers had been installed in the Acura.

Evidence found at the crime scene also connects Reyes to the murder. The prosecution's expert found that the bullets in Huizar's body could have been shot from the Rossi. There was also evidence of shoe prints consistent with Reyes's shoes found near Huizar's body. In addition to the physical evidence, Reyes attempted to flee from arresting officers shortly after the crime was committed. (*Zapien, supra*, 4 Cal.4th at p.

983 [defendant's flight after the murder was an implied admission that was considered corroborating evidence].)

The jury was also cautioned about the testimony given by Alfaro and Guillen. Defense counsel cross-examined Alfaro and Guillen on inconsistencies in their testimonies, presented evidence highlighting their previous omissions to the police, and argued that they were not credible witnesses. The trial court instructed the jury on weighing a witness's credibility based on potential biases or prejudice, their past relationships with Reyes, and their personal interest in the case. We presume that the jury understood and followed the instructions. (*People v. Cline* (1998) 60 Cal.App.4th 1327, 1336.)

Because there was sufficient corroborating evidence, and because the jury was cautioned as to the credibility of Alfaro and Guillen, there was no reasonable probability that Reyes would have received a better result even if there was error. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Ryan J. Wright, Judge

Superior Court County of Ventura

Robert F. Howell, under appointment by the Court of Appeal, for Defendant and Appellant.

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